

## Quantum of planning costs



**Rupert Cohen**

## Standard basis – CPR 44.3

- (1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs –(a) on the standard basis; or (b) on the indemnity basis, but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.
- (2) Where the amount of costs is to be assessed on the standard basis, the court will –
  - (a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and
  - (b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party

## Indemnity basis – CPR 44.3

- (1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs –(a) on the standard basis; or (b) on the indemnity basis, but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.
- Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

## Reasonableness

- Two concepts determine the quantum of an assessment
- Reasonableness – evaluative assessment of the item of cost against the factors in CPR 44.4 (‘all the circumstances’)
- Proportionality – comparing the total to the importance, complexity and development of the litigation.
- On neither basis will costs which are unreasonably incurred or unreasonable in amount be allowed (CPR 44.3) – no hindsight permitted re. reasonableness (Francis v Francis and Dickerson).

## Proportionality – CPR 44.3

- (5) Costs incurred are proportionate if they bear a reasonable relationship to
  - 
  - (a) the sums in issue in the proceedings;
  - (b) the value of any non-monetary relief in issue in the proceedings;
  - (c) the complexity of the litigation;
  - (d) any additional work generated by the conduct of the paying party; and
  - (e) any wider factors involved in the proceedings, such as reputation or public importance.
- West v Stockport NHS Foundation Trust [2019] EWCA Civ 1220

## Tips for receiving party

- When drafting the bill each document relating to an item of cost should be marked with the same item number as the item of cost has been assigned in the bill.
- Every call needs an accompanying attendance note.
- Emphasise conduct and complexity in the narrative to the bill.
- If you don't ask you won't get – blocks of costs are often compromised in the hearing / the judge will take a broad brush so more is more.
- Target your defensive points at the big ticket items.
- Always provide evidence of haggling over the quantum of disbursements.
- Guideline hourly rates: Ohpen Operations UK Ltd v Invesco Fund Managers Ltd [2019] EWHC 2504 (TCC)

## Tips for paying party

- Duplication.
- Attack disbursements: *“A proper measure for Counsel’s fees is to estimate what fee a hypothetical Counsel, capable of conducting the case effectively, but unable or unwilling to insist on the higher fees sometimes demanded by Counsel of pre-eminent reputation, would be content to take on the brief: but there is no precise standard of measurement and the judge must, using his or her knowledge and experience, determine the proper figure”* (Per Pennycuik J in Simpsons Motor Sales (London) Ltd v Hendon BC [1965] 1 W.L.R. 112.)
- Costs incurred in arranging the retainer / client care information not recoverable.
- Always demand evidence of product.
- Hourly rates → both to attack solicitor time cost and expert costs
- Attack retainer

## Tips for both

- Always make offers – Part 36 applies to the costs of the assessment.
- Use costs draftsmen for the bill, counsel for the big ticket items and then costs draftsmen for the line by line assessment.
- Follow PD 47 to the letter.
- Use technology.
- Don't use counsel who isn't a costs specialist.....
- If you are a solicitor use a costs draftsman; your time is better spent elsewhere

## Costs of the assessment proceedings

- CPR 47.20: (1) The receiving party is entitled to the costs of the detailed assessment proceedings except where –(a) the provisions of any Act, any of these Rules or any relevant practice direction provide otherwise; or (b) the court makes some other order in relation to all or part of the costs of the detailed assessment proceedings
- (3) In deciding whether to make some other order, the court must have regard to all the circumstances, including –
  - (a) the conduct of all the parties;
  - (b) the amount, if any, by which the bill of costs has been reduced; and
  - (c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

# Thank you for listening

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